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OFFICE OF PETITIONS

In re Application of
Otsuki et al.
Application No. 10/776,248
Filed: February 12, 2004
Atty Docket No. 392.1872

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DECISION ON PETITION

This is a decision on the PETITION filed December 16, 2004, requesting that the Notice mailed October 18, 2004 be withdrawn and the application be accorded a filing date of February 12, 2004, with FIG. 13 as a part of the original application disclosure.

The application was deposited on February 12, 2004. However, on October 18, 2004, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date; however, figure 13 described in the specification appeared to have been omitted.

In response, the present petition was filed. Applicants state that the allegedly omitted FIG. 13 was in fact deposited with the non-provisional application papers. Applicants base this assertion on the fact that a corresponding FIG. 13 (with Japanese text) of the corresponding Japanese Priority Application 2003-041249 filed February 19, 2003 was filed concurrently with the subject U.S. application. Applicants submit with the petition a copy of FIG. 13 with English text.

The application file is the official record of papers received in an application. A review of the record confirms that 10 sheets of drawings were received on filing. Drawing sheet 10/11 containing FIG. 13 was not among the application papers received on February 12, 2004, as that drawing sheet is not in the application file. Further, applicants have not submitted evidence to show that Drawing sheet 10/11 containing FIG. 13 (with English text) was deposited on February 12, 2004. In fact, applicants do not dispute its omission, but rather rely on the presence of another drawing sheet containing identical content (with Japanese text) for entry of FIG. 13. Thus, the Notice mailed October 18, 2004 stating that FIG. 13 appeared to have been omitted from the application was properly mailed and will not be withdrawn.

Nonetheless, the record confirms that the application papers, deposited February 12, 2004, included the priority document, which contained eleven (11) sheets of drawings (including sheet 10/11 containing FIG. 13). The drawing sheet containing FIG. 13 submitted on petition is not identical to the drawing sheet containing FIG. 13 in the priority document submitted February 12, 2004. The drawing in the priority document is in the Japanese language. The drawing sheet containing FIG. 13 in the priority document will be construed as the drawing sheet containing FIG. 13 for this application for filing date purposes.

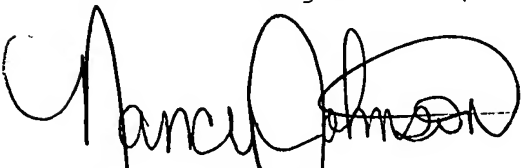
To the extent indicated herein, the petition is GRANTED.

The petition fee will not be refunded since the present petition and petition fee were necessary in view of applicant's filing error.

The application file will be returned to the Office of Initial Patent Examination for

- reprocessing with a filing date of February 12, 2004, using the one (1) sheet of drawings containing FIG. 13 in the priority document filed February 12, 2004, and the ten (10) sheets of drawings containing FIGS. 1-12, 14 filed on February 12, 2004, and an indication in Office records that eleven (11) sheets of drawings were present on filing;
- and review of the drawing sheet containing FIG. 13 (with English text) filed December 16, 2004, as a replacement drawing.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions